

of a Response and then a Reply have no impact on the Motion to Transfer or Dismiss as that motion was mooted when plaintiff timely filed its Amended Complaint.

The court well anticipates that defendant will move to dismiss the Amended Complaint and that plaintiff will likely continue to argue that venue is proper in this district because acts of infringement occurred in this district and defendant has employees residing in this district. While TC Heartland LLC v. Kraft Foods Grp. Brands LLC, ___ U.S. ___, 137 S. Ct. 1514, 1521 (2017) makes clear that venue is determined under Section 1400(b), the standard for determining whether a defendant has a “regular and established business” under that provision appears to remain unchanged. As a sister court recently held post-TC Heartland,


whether a defendant has a “regular and established business” is “whether the corporate defendant does its business in that district through a permanent and continuous presence there,” and is not a question of whether it has a “fixed physical presence in the sense of a formal office or store.”

iLife Techs., Inc. v. Nintendo of Am., Inc., 3:13-CV-04987, 2017 WL 2778006, at *5 (N.D. Tex. June 27, 2017) (citing In re Cordis Corp., 769 F.2d 733, 737 (Fed. Cir. 1985)). If defendant does pursue dismissal or transfer, the Court would direct the parties’ attention to this particular inquiry.

ORDER

IT IS, THEREFORE, ORDERED that defendant’s Motion to Transfer for Improper Venue Pursuant to Rule 12(b)(3) and 28 U.S.C. § 1406(a), or, in the Alternative, to Dismiss (#4) is DENIED without prejudice as MOOT.

Signed: July 3, 2017



Max O. Cogburn Jr.
United States District Judge